

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte JAMES P. MITCHELL

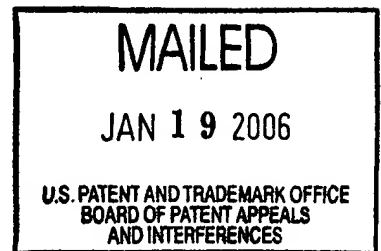
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Appeal No. 2005-1821  
Application No. 09/494,198

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ON BRIEF

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Before RUGGIERO, GROSS, and LEVY, Administrative Patent Judges.  
LEVY, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-17.

We REVERSE, and enter a new ground of rejection under 37 CFR § 41.50(b).

BACKGROUND

The appellant's invention relates to a system and method for internet access on a mobile platform (specification, page 1).

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Claim 1 is representative of the invention, and is reproduced as follows:

1. A communication system for a mobile platform, comprising:
  - a direct broadcast very low range receiver located on the mobile platform; and
  - a computer network including at least one terminal on the mobile platform, the terminal providing Internet access through the direct broadcast receiver.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

LaRocca et al. (LaRocca)	6,314,572	Nov. 6, 2001 (filed May 28, 1999)
Hiett	6,477,152	Nov. 5, 2002 (filed Dec. 30, 1998)

Claims 1, 2, 4-9, 11-14, 16 and 17 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Hiatt.

Claims 3, 10 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hiatt in view of LaRocca.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the answer (mailed November 3, 2004) for the examiner's complete reasoning in support of the rejections, and to the brief (filed September 8, 2004) for the appellant's arguments thereagainst.

Only those arguments actually made by appellant have been considered in this decision. Arguments which appellant could have made but chose not to make in the brief have not been considered. See 37 CFR § 41.37(c)(1)(vii)(eff. Sept. 13, 2004).

#### OPINION

In reaching our decision in this appeal, we have carefully considered the subject matter on appeal, the rejections advanced by the examiner, and the evidence of anticipation and obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, appellant's arguments set forth in the brief along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

Upon consideration of the record before us, we make the determinations which follow. We observe at the outset that appellant (brief, page 4) has included all of the claims rejected under 35 U.S.C. § 102(e) as a single group, with claim 1 indicated as representative of the group. In addition, appellant has indicated that all of the claims rejected under 35 U.S.C.

§ 103(a) as a single group, with claim 3 indicated as representative of the group. Notwithstanding the groupings provided, appellant refers to both independent claims 1 and 8 in the arguments regarding the claims rejected under 35 U.S.C. § 102(e). Accordingly, we will separately address claim 8 to the extent that arguments presented apply to this claim. In addition, we observe that the claims of group 2 have been argued as a group. Accordingly, we will consider claim 3 as representative of this group. We begin with the rejection of claim 1. It is well settled that if a prior art device inherently possesses the capability of functioning in the manner claimed, anticipation exists whether there was a recognition that it could be used to perform the claimed function. See, e.g., In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997).

The examiner's position (answer, pages 4 and 5) is ,inter alia, that Hiett discloses a very low range infrared signal broadcast receiver located on the mobile platform. Appellant asserts (brief, page 8) that "Hiett does not recite a very low range direct broadcast receiver or providing Internet data to the

computer network via the direct broadcast receiver from a distance of less than a few meters." It is asserted (brief, pages 8 and 9) that:

Applicant defines short or low range in the application, stating: "Direct transmitter 66 and transmitter 70 are preferably short range communication units. System 30 can be designed so that transmitters 66 and 70 only require a range of several feet or a few meters". . . . Further, the application states "Wireless gatelink 130 can be a very short-range (several feet to a few meters) high-speed radio data link or high-speed optical data link" . . . . The present application also states "In this way, several mobile platforms 35 can communicate to several docking areas 37 without interference and without utilizing different frequency ranges. In addition, utilizing short-range devices for receivers 60 and 72 and transmitter 70 allows smaller antennas."

It is argued (brief, page 9) that receiver 106 in Hiett is not disclosed as being a very short range receiver, and that the only range discussed is a 1000 foot range. It is further argued (id.) that infrared signals may potentially be received from a significant distance, in particular, more than a few meters. Appellant additionally asserts (id.) that:

Further, a wireless LAN that is configured to broadcast within a 1,000 foot range cannot provide the advantages described in the present application. For example, where multiple transmitters, as described in the present application, are used in the system of Hiett the 1,000 foot range would cause interference and require the use of different frequency

ranges. Similarly, the 1,000 foot range would require larger antennas to receive the signal."

We begin with claim construction. It is an essential prerequisite that the claimed subject matter be fully understood. Analysis of whether a claim is patentable over the prior art begins with a determination of the scope of the claim. The properly interpreted claim must then be compared with the prior art. Claim interpretation must begin with the language of the claim itself. See Smithkline Diagnostics, Inc. v. Helena Laboratories Corp., 859 F.2d 878, 882, 8 USPQ2d 1468, 1472 (Fed. Cir. 1988). Accordingly, we will initially direct our attention to appellant's claim 1 to derive an understanding of the scope and content thereof. The general claim construction principle that limitations found only in the specification of a patent or patent application should not be imported or read into a claim must be followed. See In re Priest, 582 F.2d 33, 37, 199 USPQ 11, 15 (CCPA 1978). One must be careful not to confuse impermissible imputing of limitations from the specification into a claim with the proper reference to the specification to determine the meaning of a particular word or phrase recited in a claim. See E.I. Du Pont de Nemours & Co. v. Phillips Petroleum

Co., 849 F.2d 1430, 1433, 7 USPQ2d 1129, 1131 (Fed. Cir.), cert. denied, 488 U.S. 986 (1988).

What we are dealing with in this case is the construction of the limitations recited in the appealed claims. As stated by the court in In re Hiniker Co., 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998) "[t]he name of the game is the claim." Claims will be given their broadest reasonable interpretation consistent with the specification, and limitations appearing in the specification are not to be read into the claims. In re Etter, 756 F.2d 852, 858, 225 USPQ 1, 5 (Fed. Cir. 1985).

We find that the language "from a distance of less than a few meters" does not appear in claim 1. However, claim 1, does recite that the direct broadcast receiver is a very low range receiver. From the definitions found in the specification, as noted by appellant (brief, page 8), of "short or low range" we note that the term low does not appear in the definitions provided, or from our review of the specification. However, the specification does refer to short range (page 16) and very short range (page 22). In these descriptions found in the specification, we note that the direct transmitter 66 and transmitter 70 are "preferably" short range communications units, and that the system "can" be designed so that the transmitters

only require a range of several feet or a few meters. From these disclosures we find that the direct transmitter 66 and transmitter 70, while preferably short range communication units, are not limited to short range units. In addition, from the language that the transmitters "can" be designed to only require a range of several feet to a few meters, we find that it is not a requirement that the transmitters 66 and 70 are limited to transmitting over a few meters. However, we find from the language on page 22 of the specification that wireless gatelink 130 "can be a very short range (several feet to a few meters . . . .)." We find from this language that wireless gatelink 130 can be a very short range of several feet to a few meters. We further find that although the gatelink is not limited to a very short range, if it is a very short range, the transmission is for a very short distance of several feet to a few meters. From the language of claim 1 of "a direct broadcast very low range receiver" we find that the language, by virtue of the express definition in the specification, is limited to several feet to a few meters. In addition, we note that we consider "low" to mean the same, in this instance, as "short."



Thus, the issue becomes whether Hiett teaches the very low range (several feet to a few meters) direct broadcast receiver recited in claim 1.

Turning to Hiett, the language in question (col. 9, lines 18-31) recites:

Further, referring to FIG. 5, first communication medium 104 may also include a ground-based LAN 512 and network system 314. In accordance with this embodiment, ground-based LAN station 512 preferably includes a transmission and receiving unit capable of communicating with the LAN interface 506. In accordance with one embodiment, ground-based LAN 512 is an airport LAN configured to communicate with aircraft operating in the airport area, for example within 1000 feet for a wireless LAN 512. The LAN interface 506 may communicate with the LAN 512 in any appropriate manner, including direct electrical or optical connection, acoustic signals, optical signals, infrared signals, microwave signals, cellular communications, or any other suitable communication technique.

From this disclosure, we find that the ground-based local area network (LAN) is an airport LAN that communicates with aircraft operating in the airport area, for example within 1000 feet for a wireless LAN. Thus, LAN interface 506 on the mobile platform (airplane) communicates with airport LAN 512 in any appropriate manner, including direct electrical or optical connection, infrared signals, cellular communications, etc. From the disclosure of Hiett, we find that airport LAN 512 is for short

range communications, and that compared to communications between the airplane and DBS satellite 210, the range between the airplane and the airport ground-based LAN is a short (or low) range. However, claim 1 recites "a very low range." In Hiett, the range of within 1000 feet does not specify a lower limit to the range. Even with a direct electrical connection between the terminal LAN 512 and the aircraft receiver 106, via aircraft interface 506, there is no disclosure in Hiett that a cable providing a direct connection between the aircraft with the terminal LAN would only be several feet to a few meters. As there is no lower range of the "within 1000 feet" specifically disclosed by Hiett, we do not find that Hiett anticipates claim 1. Similarly, we cannot sustain the rejection of independent claim 8 as the claim recites transmission from less than a few meters. The rejection of claims 1, 2, 4-9, 11-14, 16 and 17 under 35 U.S.C. § 102(e) is therefore reversed.

#### New Ground of Rejection

New Ground of Rejection of claims 1, 2, 4-9, 11-14, 16 and 17 under 35 U.S.C. § 103(a) as being unpatentable over Hiett.

At the outset, we make reference to the our findings, supra, with respect to Hiett. Although we reversed the rejection of

claims 1, 2, 4-9, 11-14, 16 and 17 under 35 U.S.C. § 102(e) because they were not anticipated by Hiett, we find, for the reasons which follow, that the teachings of Hiett would have suggested to an artisan that the in-airport ground-based transmitter, transmits, inter alia, over a very low range (of less than a few meters). Since the ground-based system is intended for use with aircraft operating within the airport area, we find that an artisan would have considered it obvious to operate the ground-based airport LAN with aircraft near or at a gate of the airport, communicating, using cellular or infrared communications, etc., with the aircraft receiver 106, via interface 506, over distances as short as less than a few meters. That is, from the disclosure of a ground-based system operating within 1000 feet of the airport, it would flow from the disclosure that it would have been obvious to operate the system of Hiett from 1000 feet down to zero feet or within a few meters. As the disclosure of Hiett would have suggested to an artisan a range that overlaps the range of the claim, according to In re Malagari, 499 F.2d 1297, 1302, 182 USPQ 549, 553 (CCPA 1974), an overlapping range is at least prima facie obvious.

We do agree with appellant (brief, page 5) that infrared signals can be communicated over distances significantly greater

than a few meters. As disclosed in Newton's Telecom Dictionary<sup>1</sup>, infrared signals, even though they are generally used for distances less than 20 feet, can transmit as much as 6.312 Mbps over distances of several miles. Thus, we do not agree with the examiner (answer, page 5) that infrared signals are only used for short range communications.

We are not persuaded by appellant's assertion (brief, page 9) that a 1000 foot range would require a larger antenna to receive the signal. Firstly, applicant's specification makes clear that the invention is not limited to receiving signals transmitted a few meters, but can be larger distances. Secondly, no antenna or antenna size is recited in any of appellant's claims. In addition, as noted by the examiner (answer, page 9), the example in Hiett of within 1000 feet lists 1000 feet as an upper limit and suggests that the signals will be received that are transmitted over distances less than 1000 feet. As we stated, supra, from the disclosure that the in-airport system is for use by aircraft operating within the airport, we find a suggestion of aircraft using the system at any distance within the airport, such as at a gate, e.g., a very low range or within

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<sup>1</sup> © 1999. A copy of the pertinent page is attached to the Decision.

a few meters. As to independent claim 8, we reject the claim for the same reasons as we reject claim 1. As to the other claims in the group, we reject these claims for the reasons provided by the examiner (answer, page 5), as the examiner has shown these features to be disclosed by Hiett.

We turn next to claims 3, 10 and 15 as being unpatentable over Hiett in view of LaRocca. At the outset, we make reference to our findings, supra, with respect to the teachings of Hiett, in our rejection of claims 1, 2, 4-9, 11-14, 16 and 17 under 35 U.S.C. § 103(a). The examiner turns to LaRocca for a teaching of using a back channel transmitter. Appellant's arguments (brief, pages 10 and 11) are based upon LaRocca not making up for the deficiencies of Hiett. We are not persuaded by appellant's arguments because of our finding that Hiett suggests, under 35 U.S.C. § 103(a) the invention of the claims from which claim 3 depends. From our review of LaRocca, we will sustain the rejection of claims 3, 10 and 15 for the reasons set forth in the examiner's answer. Accordingly, the rejection of claims 3, 10 and 15 under 35 U.S.C. § 103(a) is affirmed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1, 2, 4-9, 11-14, 16 and 17 under 35 U.S.C. § 102(e) is reversed. The decision of the examiner to reject claims 3, 10 and 15 under 35 U.S.C. § 103(a) is affirmed. This decision contains a new ground of rejection pursuant to 37 CFR § 41.50(b) (effective September 13, 2004).

37 CFR § 41.50(b) provides "[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review."

37 CFR § 41.50(b) also provides that the appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. . . .

(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

AFFIRMED-IN-PART  
37 CFR § 41.50(b)

BOARD OF PATENT  
APPEALS  
AND  
INTERFERENCES

Appeal No. 2005-1821  
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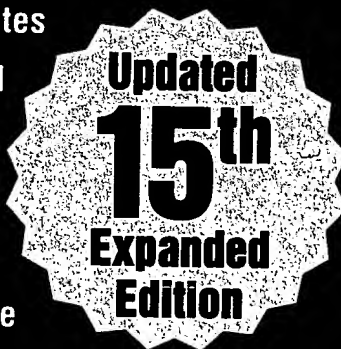




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airman, suggested the idea. He said, "I've seen a lot of information 'anywhere' and I've seen a lot of applications that use it." Dynamic Data Exchange (DDE) is a standard for cellular communications and

**Channel 1.** A channel provided for carrying all the necessary communication, including user control signals, etc. It may have a higher rate than that required for the data.

**Channel made available by the circuit or value-added service.** This transmission capability is provided by the circuit or value-added service.

**Boxes.** An Octel term for a mailbox in a mail system. Here's their access, directly or indirectly, to the mailbox.

**Call.** A live by employees. Callers the system. One type of call is the messages to the callers. It can be as audiotext, makes it a base so callers can select to hear. Another type of prompts callers to reply to. Further information can be their names and phone number. They can also be employee who can immediately word can be required before information can be heard.

**Call type options.** Two digit 10 digit destination number and IECs about the type of line. Special characteristics of the e classes. These codes plus of the signalling protocol of les are defined by Bellcore. 02 - ANI Failure, 06 - or Handling, 20 - AIOD, 24 - DN, 31 - Trouble/Busy, 32 - 34 - Telco Operator, 52 - 2 - Cellular 2, 63 - Roaming, rate virtual Network. name for the data fields with

Coined by James Martin, the ssing, the term refers to sys- 1 their impact on giving the edge. In short, a fancy term (MIS), which itself was Processing.

Relay term referring to the rich can include either user data to be passed between user devices. The informa- though ANSI recommends which accommodates most

n HDLC, DDCMP, or related

**Information Highway.** A term coined by Al Gore. This was defined by Dan Lynch, the man who started the trade name InterOp and who was very heavily involved with Internet in the very beginning. As the term got developed and popularized, it was turned on by the idea, it became known as The Information Superhighway. See also Information Superhighway.

**Information Outlet IO.** Sort of like an AC power outlet, a little more cerebral. A connecting device designed for a location (usually a wall in the office) on which horizontal wiring subsystem cable pairs terminate and which receives an associated plug; it is an administration point located between the horizontal wiring subsystem and work location wiring system. Although such devices are also referred to as outlets, the term information outlets encompasses the integration of voice, data, and other communication services that can be supported via a premises distribution system.

**Information Packet.** A bundle of data sent over a network. The protocol used determines the size and makeup of the packet.

**Information Page Mapping.** See ADSI.

**Information Payload.** 50.112 Mb/s of bandwidth allocated within each SONET STS-1 channel to carry information. Also known as STS-1 envelope capacity.

**Information Processing.** Data to achieve a desired objective. Also called data processing.

**Information Provider.** A business or person providing information to the public for money. The information is typically selected by the caller through touchtones, delivered using voice processing equipment and transmitted over telephone lines, e.g., 900, 976, 970. Typically, billing for information providers' services is done by a local or long distance phone company. Sometimes the revenues for the service are split by the information provider and the phone company. Sometimes the phone company simply bills a per minute or flat charge. A typical "information provider" is American Express, which provides a service — 1-900-WEATHER. By dialing that number you can touchtone in city names and find out temperatures, weather forecasts, etc. Calling 1-900-WEATHER costs several dollars a minute.

**Information Service.** The Telecommunications Act of 1993 defined Information Service as: The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

**Information Signals.** A Bellcore definition. Information signals inform the customer or operator about the progress of the call. They are generally in the form of universally understood audible tone (for example, dial tone, busy, ringing) or recorded announcements (for example, intercept, all circuits busy).

**Information Superhighway.** A very vague concept which Senator Al Gore created in the early 1990s and which gained great popularity when he became vice president and the Clinton/Gore administration started pushing the concept. The Information Superhighway is a term sufficiently vague that it can mean anything to anyone. It can mean a gigantic network reaching everybody in North America, or the planet (if you're that expansive). It could just as easily mean a combination 500-channel interactive cable TV system with full video on demand to every household in North America.

Somewhere in all this is the idea that easy access to large amounts of information will enrich our lives immeasurably. Who's going to get first access to it all, what the precise technical details will be, and who's going to pay for it are, naturally, minor details to be worked out. We can be assured that the details will be worked out, since the idea originated in Washington, DC., home of so many practical ideas.

**Information Technology IT.** A fancy name for data processing, which became management information systems (MIS), which became information technology. All the same thing, essentially. See also IT.

**Information Technology District.** The Information Technology District (ITD) is New York City's fastest growing totally-wired community. Anchored by the New York Information Technology Center @ 55 Broad Street and sharing the Downtown Business Improvement District's boundaries of City Hall to the southern tip of Manhattan, the ITD serves as the headquarters for Silicon Alley. The ITD is home to more than 250 IT companies, from web page developers to financial modeling firms. According to promotion from ITD, these companies are quickly emerging as the City's prime economic generators, creating jobs and innovative products, and serving as pioneers in the ongoing revitalization of Downtown into a 24-hour, 21st Century global community.

**Information Technology Services.** I got this email from Ferrell Mallory, Managing Director, IT Operations Brigham Young University, Salt Lake City. "Remember all that preaching you did years back about telecom operations getting swallowed up by MIS types? Well, I'm there again. I was in and out of our campus MIS operation 14 years ago when they decided my telecom operation was a "major misfit" until the campus became so dependent upon the data network we installed — mostly from telecom revenues — AND everyone blamed the network if anything vaguely related to the network was inoperative, e.g., network infrastructure, servers, clients, keyboards, electrical power, air conditioning, etc., etc. So, we reorganized again, this time along functional lines instead of technology and I'm back in what we call "Information Technology Services". I still have the telephone system and data communication system but have added servers, and all campus instructional media systems and services.

**Information To Go.** A term coined by Digital Equipment Corporation to refer to the transmission of data over airwaves instead of fixed wires.

**INFOSEC.** A military term for information systems security. See NSA.

**InfoSpace.** A service that helps surfers locate listings of people, businesses, government offices, toll-free numbers, fax numbers, e-mail addresses, maps and URLs, all on one Web site. InfoSpace has developed a patent pending technology that integrates all of these services. [www.infospace.com](http://www.infospace.com)

**Infostrada SpA.** A new phone company which started service in July 1998, competing against Italy's erstwhile monopoly, Telecom Italia. Infostrada is controlled by Olivetti SpA and the German company, Mannesmann AG.

**Infrared.** The band of electromagnetic wavelengths between the extreme of the visible part of the spectrum (about 0.75 um) and the shortest microwaves (about 100 um). This portion of the electromagnetic spectrum is used in some fiber-optic transmission systems, but more commonly for airwave communications. In such application, the system typically consists of a two transmitter/receivers. The infrared light signal is transmitted through a focused lens to a collecting lens in the receiving device. Transmission rates of as much as

**Initializing Terminals** An ISDN term. These devices

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